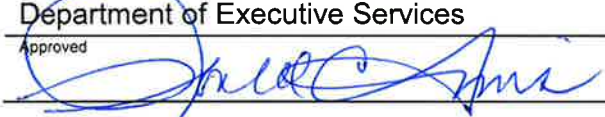


Administrative Policies and Procedures**General Administrative
Policies & Procedures**

Title	Document Code No.
Legal Hold Procedures for Records and other Documents	LGL 15-1 (AEP)
Department/Issuing Agency	Effective Date.
Department of Executive Services	APRIL 2, 2008
Approved	



1. **SUBJECT TITLE:** Legal Hold Procedures for Records and other Documents
 - 1.1. **EFFECTIVE DATE:**
 - 1.2. **TYPE OF ACTION:** New
 - 1.3. **KEY WORDS:** Document, Record, Legal Hold
2. **PURPOSE:** This policy provides guidance for the management and preservation of records, documents, and other items involved in litigation and/or potential litigation.
3. **ORGANIZATIONS AFFECTED:** This policy affects all King County Executive Branch departments, divisions and agencies and, in addition, any non-Executive Branch King county departments adopting this policy
4. **REFERENCES:**
 - 4.1. RCW Title 40 – Public Documents, Records, and Publications.
 - 4.2. King County Code 2.12
 - 4.3. Federal Rules of Civil Procedure
5. **DEFINITIONS:**
 - 5.1. **Public Records.** Per RCW 40.14.010, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.
 - 5.2. **County records.** King County Chapter 2.12.005 – "County records" means any document including any paper, correspondence, completed form, bound records book, photograph, film, sound or video recording, map, drawing, machine-readable material, or other document, regardless of physical form or characteristics, and including copies thereof, that have been made by or received by any agency of King County in connection with the transaction of public business.

- 5.3. Disposition of Public Records (RCW 40.14.070) – Public records may be destroyed or transferred only in accordance with Washington State Public Records Law, and the approval of the Washington State Local Records Committee
- 5.4. Records Retention Schedule (KCC 2.12.060 and RCW 40.14.070) – A document providing authority for the final disposition of public records approved by the State Local Records Committee.
- 5.5. Legal Hold – A request by the PAO to an agency to preserve all records, including documents and electronically stored information that may relate to a pending or anticipated legal action involving the entity. This request attempts to ensure that the records in question will be available for the discovery process prior to litigation. A legal hold may be issued in an electronic or paper-based format.

An agency must take reasonable steps to preserve records when it learns of pending or imminent litigation, or when litigation is reasonably anticipated. Legal holds seek to prevent spoliation (destruction, alteration, or mutilation) of evidence which can have a negative impact on the defense. The Legal Hold applies not only to paper-based documents but also to electronically-stored information (ESI), including email and draft documents.

- 5.6. Electronic Discovery (also called e-discovery) refers to the process in which electronically stored information is sought, located, secured, and searched with the intent of using it as evidence in a legal case. E-discovery can be carried out in a variety of formats, including offline on a particular computer, or in a networked environment.
- 5.7. Electronically Stored Information (ESI) includes email, documents, writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, by an agency into a reasonably usable form.
- 5.8. Personnel – Employees, appointed staff, elected officials, and external entities who have knowledge and control over the relevant records. All Personnel have a duty to preserve records under their direct control.
- 5.9. Records Custodian – Individuals, either internal or external to the agency who are responsible for retention, disposition/destruction, and access to relevant records. A Records Custodian is someone who manages records for Personnel, Key Personnel, and other record owners. A Records Custodian is knowledgeable in records management policies and procedures and may be called upon to attest as to how records were managed in the normal course of business. Examples of Records Custodians include the County Records Center, County Archives, and System Administrators responsible for systems storing ESI.
- 5.10. Key Personnel: A King County employee or other county-affiliated witness who may have access to or control over Legal Hold-related records, including emails or other ESI, as determined by the Agency Attorney in consultation with the Agency Head or delegate. Key Personnel will be identified on a case-by-case basis dependent on the subject-matter of the litigation or anticipated litigation. A Legal Hold may request that

Effective Date: 4/2/08

Key Personnel locate relevant records and transmit them to the Agency Attorney. Key Personnel may coordinate their Legal Hold efforts with Records Custodians if appropriate.

6. POLICY:

6.1. Policy statement – It is the policy of King County to abide by applicable state and federal laws, court decisions, and court rules pertaining to the protection and preservation of records placed under a legal hold in response to litigation or potential litigation.

7. PROCEDURES:

7.1. NOTIFICATION OF LITIGATION OR POTENTIAL LITIGATION

- 7.1.1. When informed of litigation or upon identifying that the reasonable potential for litigation exists, County employees will notify their Supervisor.
- 7.1.2. Supervisors are responsible for forwarding the notification to the Department Head of the affected Agency.
- 7.1.3. The Department Head or delegate will notify the Agency's Attorney of the litigation or threat of litigation.
- 7.1.4. The Agency Attorney should provide to the Department Head of the impacted Agency a best possible description of the subject-matter to be placed on hold as soon as possible.
- 7.1.5. The Department Head or delegate will communicate the Legal Hold to all internal Personnel who have not been notified directly by the Agency Attorney, and notify the Agency Attorney about any external Personnel who should be notified about the Legal Hold. The Agency Attorney will make a reasonable effort to communicate with the Department Head or delegate before communicating the Legal Hold to internal Personnel.
- 7.1.6. The Department Head or delegate will inform the Agency Attorney about any existing Legal Holds that may overlap with a newly-issued Legal Hold.
- 7.1.7. The Agency Attorney will issue a Legal Hold to all Key Personnel and external Personnel.
- 7.1.8. The Agency Attorney may issue a Legal Hold when learning of reasonably anticipated or pending litigation from a source outside of the agency, such as directly from a litigant or potential litigant. In such cases the Agency Attorney will make a reasonable effort to communicate with the Department Head or delegate before issuing the Legal Hold.

7.2. PRESERVATION OF RECORDS

- 7.2.1. The Agency Attorney and the Agency Department Head or delegate will communicate with each other in order to develop the procedures and tasks necessary to respond to the litigation. Appendix 1 provides an example of procedures and tasks which should be considered based upon the scope and impact of the litigation. Depending on the nature of the litigation, not all of the tasks in Appendix 1 will be required to be performed.

Effective Date: 4/2/08

7.2.2. Personnel will suspend destruction of all relevant materials until the Legal Hold is released.

7.2.3. In response to the Legal Hold, Personnel will provide a list of relevant materials which are being held, or produce those materials to the Agency Attorney, if necessary. ESI will generally be preserved and produced in native format.

7.2.4. The Agency Department Head or delegate is responsible for compiling the lists from all Personnel of all relevant materials being held or produced.

7.3. REMOVAL OF LEGAL HOLD & END OF LITIGATION TASKS

7.3.1. When the litigation has been concluded, or the threat of litigation has been resolved, the Agency Attorney will notify all Personnel that the record hold has been removed.

7.3.2. Released documents will resume normal retention requirements.

7.4. AGENCY REQUIRED SUPPORTING DOCUMENTS

Documentation of the actions taken by the agency in placing, managing and releasing the Legal Hold may be necessary to show compliance with the agency's legal obligations or to authenticate the records so that they are admissible in court. Records admitted for trial may need to be authenticated by a qualified Records Custodian.

7.4.1. Agency Legal file

7.4.1.1. Notifications – Lists individuals initially notified of litigation and those individuals who should be notified of updates to an ongoing Legal Hold.

7.4.1.2. Preservation Records – Details of all aspects of actions which are taken in response to the Legal Hold.

7.4.1.3. Any correspondence detailing the actions taken.

7.4.1.4. Any records needed to provide affidavits or depositions or written declarations that will attest to the authenticity of the records which are part of the Legal Hold.

7.4.1.5. Policies and procedures related to the Records Management functions of the organization.

7.4.1.6. Index – Summary listing of those records currently being held as part of the Legal Hold.

7.4.1.7. Retention Schedules – Compilation of all record series involved in the litigation or potential litigation.

7.4.1.8. Records Center transmittals – The transmittals for those records held at the County Records Center which are being held in response to the litigation, if applicable.

7.4.1.9. Release and disposition notices of the records after litigation is concluded or the matter is otherwise resolved.

8. RESPONSIBILITIES:

8.1. Agency Department Heads are responsible for:

8.1.1. Developing procedures to implement this policy.

Effective Date: 4/2/08

- 8.1.2. Providing and documenting timely notifications as outlined in 7.1.3, 7.1.5 and 7.1.6 once they are notified of litigation or the potential for litigation.
- 8.1.3. Providing an index of held records to the Agency Attorney.
- 8.2. The Agency Attorney is responsible for:
 - 8.2.1. Providing the Agency with a description of the subject-matter of the litigation or anticipated litigation so that relevant records can be placed on hold as outlined in 7.1.4;
 - 8.2.2. Providing legal advice related to the Legal Hold; and
 - 8.2.3. Communicating the Legal Hold with other members of the PAO to ensure that any cross-department holds or other cases dependent upon the relevant records are identified and addressed in accordance with this policy.
- 8.3. Public Information Officers are responsible for providing information on the actions of the agency.
- 8.4. Records Custodians are responsible for:
 - 8.4.1. Suspending destruction of agency designated records upon notification concerning litigation or the potential for litigation.
 - 8.4.2. Assisting the Agency in locating and preserving relevant records.
- 8.5. All Personnel are responsible for complying with the provisions of this policy.

9. APPENDICES:

9.1. Appendix 1 – Litigation Support Checklist

- 9.1.1. Identify the specific Department(s), Division, Section, and/or individual which is the subject of the litigation or pending litigation.
- 9.1.2. Determine the format(s) that relevant electronic records will be held in. Preference should be given to retaining records in the native format whenever possible.
- 9.1.3. In the case of hard copy records, determine whether the original or a copy is needed to satisfy the hold requirements. Keep information on the origin of any original records so that they can be returned to the correct file after copying or the hold is released.
- 9.1.4. Identify any Record Custodians who will maintain the required media format(s) for relevant electronic records.
- 9.1.5. Identify the individuals who will be responsible for locating and reviewing records to determine relevance, who will be responsible for holding relevant records and information, and who will be responsible for communicating updates or changes to held records and maintaining a distribution list of employees involved or impacted by the litigation.
- 9.1.6. Determine the date range for affected records and information.
- 9.1.7. The above steps should be documented and retained as appropriate.